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EXTRAORDINARY

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PART II — Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 4th December, 2012:—

BILL No. 130 OF 2012

*A Bill further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973
and the Indian Evidence Act, 1872.*

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Criminal Law (Amendment) Act, 2012.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title
and commence-
ment.

CHAPTER II

AMENDMENTS TO THE INDIAN PENAL CODE

Insertion of
new section
166A.

2. After section 166 of the Indian Penal Code (hereafter in this Chapter referred to as the Penal Code), the following section shall be inserted, namely:— 45 of 1860.

Public servant
disobeying
direction
under law.

“166A. Whoever, being a public servant,—

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation,

shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.”

Insertion of
new sections
326A and
326B.

3. After section 326 of the Penal Code, the following sections shall be inserted, namely:—

Hurt by acid
attack.

‘326A. Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables any part or parts of the body of a person or causes grievous hurt by throwing acid on or administering acid to that person, with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may be for life and with fine which may extend to ten lakh rupees:

Provided that any fine imposed under this section shall be given to the person on whom acid was thrown or to whom acid was administered.

Attempt to
throw or
administer
acid.

326B. Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years and shall also be liable to fine.

Explanation.—For the purposes of sections 326A and 326B, “acid” includes any substance which has acidic or corrosive character or burning nature that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.’

Amendment
of section
354.

4. In section 354 of the Penal Code, for the words “shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”, the words “shall be punished with imprisonment of either description for a term of one year which may extend to five years and shall also be liable to fine which may not be less than one thousand rupees” shall be substituted.

Substitution of
new sections
for sections
375, 376,
376A, 376B,
376C and
376D.

5. For sections 375, 376, 376A, 376B, 376C and 376D of the Penal Code, the following sections shall be substituted, namely:—

'375. A person is said to commit "sexual assault" if that person—

Sexual assault.

(a) penetrates, for a sexual purpose, the vagina or anus or urethra or mouth of another person with—

(i) any part of the body including the penis of such person; or

(ii) any object manipulated by such person,

except where such penetration is carried out for proper hygienic or medical purposes;

(b) manipulates any part of the body of another person so as to cause penetration of the vagina or anus or urethra or mouth of such person by any part of the other person's body;

(c) engages in "cunnilingus" or "fellatio",

under the circumstances falling under any of the following six descriptions:—

Firstly.—Against the other person's Will.

Secondly.—Without the other person's consent.

Thirdly.—With the other person's consent when such consent has been obtained by putting such other person or any person in whom such other person is interested, in fear of death or of hurt.

Fourthly.—When the person assaulted is a female, with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes to be lawfully married.

Fifthly.—With the consent of the other person when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by that person personally or through another of any stupefying or unwholesome substance, the other person is unable to understand the nature and consequences of that action to which such other person gives consent.

Sixthly.—With or without the other person's consent, when such other person is under eighteen years of age.

Explanation I.—Penetration to any extent is "penetration" for the purposes of this section.

Explanation II.—For the purposes of this section, "vagina" shall also include *labia majora*.

Exception.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under sixteen years of age, is not sexual assault.

376. (1) Whoever, except in the cases provided for by sub-section (2), commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

Punishment
for sexual
assault.

(2) Whoever,—

(a) being a police officer, commits sexual assault—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a person in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits sexual assault on a person in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits sexual assault on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, commits sexual assault on a person in that hospital; or

(e) being a relative of, or a person in a position of trust or authority towards, the person assaulted, commits sexual assault on such person; or

(f) commits sexual assault on a woman knowing her to be pregnant; or

(g) commits sexual assault on a person when such person is under eighteen years of age; or

(h) being a member of a group of persons having a common intention and in furtherance of that intention commits sexual assault; or

(i) being in a position of economic or social or political dominance, commits sexual assault on a person under such dominance; or

(j) commits sexual assault on a person suffering from mental or physical disability; or

(k) while committing sexual assault causes grievous bodily harm or maims or disfigures or endangers the life of a person; or

(l) commits persistent sexual assault,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

Explanation 1.—For the purposes of this sub-section,—

(a) “women's or children's institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children;

(b) “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

Explanation 2.—Where a person is subjected to sexual assault by one or more persons in a group of persons acting in furtherance of their common intention, each of the persons in the group shall be deemed to have committed sexual assault within the meaning of this sub-section.

376A. Whoever commits sexual assault on his own wife, who is living separately under a decree of separation or under any custom or usage, without her consent, shall be punished with imprisonment of either description, for a term which shall not be less than two years but which may extend to seven years and shall also be liable to fine.

376B. Whoever,—

(a) being in a position of authority; or

(b) a public servant; or

(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or

(d) being on the management of a hospital or being on the staff of a hospital,

Sexual assault
by husband
upon his wife
during
separation.

Sexual
intercourse by
a person in
authority.

takes advantage of the position and induces or seduces any person either in the first mentioned person's custody or under the first mentioned person's charge or present in the premises and has sexual intercourse with that person, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to ten years and shall also be liable to fine.

Explanation 1.—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (c) of section 375.

Explanation 2.—For the purposes of this section, *Explanations I and II* to section 375 shall also be applicable.

Explanation 3.—“Superintendent”, in relation to a jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4.—The expressions “hospital” and “women's or children's institution” shall respectively have the same meaning as in *Explanation 1* to sub-section (2) of section 376.

6. In section 509 of the Penal Code, for the words “shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both”, the words “shall be punished with simple imprisonment for a term which may extend to three years and shall also be liable to fine which may not be less than one thousand rupees” shall be substituted. Amendment of section 509.

CHAPTER III

AMENDMENTS OF THE CODE OF CRIMINAL PROCEDURE, 1973

2 of 1974. 7. In section 154 of the Code of Criminal Procedure, 1973 (hereafter in this Chapter referred to as the Code of Criminal Procedure), after sub-section (1), the following proviso shall be inserted, namely:— Amendment of section 154.

45 of 1860. “Provided that if the information is given by the woman against whom an offence under section 354, section 375, section 376, section 376A, section 376B and section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, as far as possible, by a woman police officer.”.

8. In section 160 of the Code of Criminal Procedure, in sub-section (1), in the proviso, for the words “under the age of fifteen years”, the words “under the age of eighteen years or above the age of sixty-five years” shall be substituted. Amendment of section 160.

9. In section 161 of the Code of Criminal Procedure, after sub-section (3), the following proviso shall be inserted, namely:— Amendment of section 161.

45 of 1860. “Provided that the statement of a woman against whom an offence under section 354, section 375, section 376, section 376A, section 376B and section 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded, as far as possible, by a woman police officer.”.

10. In section 273 of the Code of Criminal Procedure, before the *Explanation*, the following proviso shall be inserted, namely:— Amendment of section 273.

“Provided that where the evidence of a person below the age of eighteen years who is alleged to have been subjected to sexual assault or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such person is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.”.

11. In section 327 of the Code of Criminal Procedure, in sub-section (2), for the words, figures and letters “trial of rape or an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code”, the words, figures and letters “trial Amendment of section 327.

of sexual assault or an offence under section 376, section 376A or section 376B of the Indian Penal Code" shall be substituted.

45 of 1860.

Amendment
of First
Schedule.

12. In the First Schedule to the Code of Criminal Procedure, under the heading—

"I.—OFFENCES UNDER THE INDIAN PENAL CODE",—

45 of 1860.

(a) after the entries relating to section 166, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"166A	Public servant disobeying direction under law.	Imprisonment for one year, or fine, or with both.	Non-cognizable.	Bailable.	Magistrate of the first class.";

(b) after the entries relating to section 326, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"326A	Hurt by throwing or administering acid.	Imprisonment for not less than ten years or imprisonment for life and fine of rupees ten lakh.	Cognizable.	Non-bailable.	Court of Session.
326B	Attempt to throw or administer acid.	Imprisonment for five years but which may extend to seven years and fine.	Cognizable.	Non-bailable.	Court of Session.";

(c) in the entries relating to section 354, in column 3, for the words "imprisonment for two years, or fine, or both" the words "imprisonment of either description for a term of one year which may extend to five years and fine of rupees ten thousand" shall be substituted;

(d) for the entries relating to sections 376, 376A, 376B, 376C and 376D, the following entries shall be substituted, namely:—

1	2	3	4	5	6
"376	(1) Sexual assault.	Imprisonment for life or imprisonment for not less than seven years and fine.	Cognizable.	Non-bailable.	Court of Session.
	(2) Sexual assault by a police officer or by a public servant or by a person being on the	Imprisonment for life or rigorous imprisonment for not less than ten years and fine.	Cognizable.	Non-bailable.	Court of Session.

1	2	3	4	5	6
	management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of a hospital, and sexual assault committed by a person in a position of trust or authority towards the person assaulted or by a near relative of the person assaulted.				
376A	Sexual assault by the husband upon his wife during separation.	Imprisonment for not less than two years extendable to seven years and fine.	Cognizable (but only on the complaint of the victim).	Non- bailable.	Court of Session.
376B	Sexual intercourse by a person in authority.	Imprisonment for not less than five years extendable to ten years and fine.	Cognizable.	Non- bailable.	Court of Session.”;

(e) in the entry relating to section 509, in column 3, for the words “Simple imprisonment for one year, or fine, or both,” the words “Simple imprisonment for three years and fine of rupees ten thousand” shall be substituted.

CHAPTER IV

AMENDMENTS OF THE INDIAN EVIDENCE ACT, 1872

- 1 of 1872. **13.** After section 53 of the Indian Evidence Act, 1872 (hereafter in this Chapter referred to as the Evidence Act), the following section shall be inserted, namely:—
- Insertion of new section 53A.
- 45 of 1860. “53A. In a prosecution for an offence under section 376 or section 376A or section 376B of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of his or her previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.”.
- Evidence of character or previous sexual experience not relevant in certain cases.
- 14.** For section 114A of the Evidence Act, the following section shall be substituted, namely:—
- Substitution of new section for section 114A.

Presumption
as to the
absence of
consent in
certain
prosecution
for sexual
assault.

‘114A. In a prosecution for sexual assault under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) or clause (h) or clause (i) or clause (j) or clause (k) or clause (l) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the other person alleged to have been sexually assaulted and such other person states in that person’s evidence before the court that she or he did not consent, the court shall presume that she or he did not consent.

45 of 1860.

Explanation.—In this section “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (c) of section 375 of the Indian Penal Code.’.

45 of 1860.

Amendment
of section
146.

15. In section 146 of the Evidence Act, for the proviso, the following proviso shall be substituted, namely:—

“Provided that in a prosecution for an offence under section 376 or section 376A or section 376B of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is in issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to his or her general immoral character, or as to his or her previous sexual experience with any person for proving such consent or the quality of consent.”.

45 of 1860.

STATEMENT OF OBJECTS AND REASONS

On the basis of the recommendations of the Law Commission of India in its One Hundred Seventy Second report on 'Review of Rape Laws' as well as the recommendations of the National Commission for Women for providing stringent punishment for the offence of rape, a High Power Committee was constituted consisting of the representatives of the Ministry of Women and Child Development, Ministry of Law and Justice, National Commission for Women, Law Commission of India and the Ministry of Home Affairs to examine the matter considering the suggestions of various quarters on the subject. The Committee submitted its report along with the draft Criminal Law (Amendment) Bill, 2011 and recommended to the Government for its enactment. The draft Bill was further examined by the Government.

2. The Criminal Law (Amendment) Bill, 2012 seeks to amend the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872, *inter alia*, so as to—

(a) substitute sections 375, 376, 376A and 376B by replacing the existing sections 375, 376, 376A, 376B, 376C and 376D of the Indian Penal Code, and replacing the word 'rape' wherever it occurs by the words 'sexual assault', to make the offence of sexual assault gender neutral and also widening the scope of the offence of sexual assault;

(b) include sections 326A and 326B in the Indian Penal Code to make acid attack a specific offence;

(c) enhance the punishment under sections 354 and 509 of the Indian Penal Code, making the offence more stringent;

(d) amend sections 154, 160 and 161 of the Code of Criminal Procedure, 1973 for providing women and male person under the age of eighteen years or above the age of sixty-five years more protections;

(e) amend the Indian Evidence Act, 1872 by way of inserting a new section 53A wherein evidence of the character of the victim or of his or her previous sexual experience shall not be relevant or questioned.

3. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 19th October, 2012.

SUSHIL KUMAR SHINDE.

T.K. VISWANATHAN,
Secretary-General.